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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1031**

State of Minnesota,
Respondent,

vs.

Kyle Rusness,
Appellant.

**Filed October 14, 2008
Affirmed
Minge, Judge**

Becker County District Court
File No. K1-06-997

Lori Swanson, Attorney General, Peter R. Marker, Assistant Attorney General, 445 Minnesota Street, 1800 Bremer Tower, St. Paul, MN 55101-2134; and

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Considered and decided by Lansing, Presiding Judge; Minge, Judge; and Connolly, Judge.

UNPUBLISHED OPINION

MINGE, Judge

Appellant challenges his conviction of first-degree aggravated robbery, arguing that insufficient evidence was submitted at trial to support the conviction. We affirm.

FACTS

On December 22, 2005, appellant Kyle Rusness and his friend, Cory Hanson, were ice fishing together. After a few drinks, Rusness brought up the possibility of robbing a local gas station where Rusness previously had worked. Rusness asked Hanson to drop him off near the station, then come back and pick him up after the robbery. Because Rusness owed Hanson money and Rusness would be able to repay him after a robbery, Hanson agreed. The two left the fish house, got in Hanson's vehicle, and drove past the gas station several times watching for customers to leave. Ultimately, Hanson dropped Rusness off close to the station.

When Rusness arrived at the station, the attendant had locked the doors and was closing. At trial, the attendant testified that she heard a knock at the back door to the station and that assuming it was a co-worker who had recently left, she opened the door. The intruder, wearing a black ski mask, forced his way into the station. He pointed a knife at the attendant and grabbed her by the arm, stating, "This is a robbery." The robber took the attendant to the safe and removed the money bags. When he left the store, the attendant called 911. The attendant informed the dispatcher that she recognized the robber as Rusness by his voice. She knew him from school, and they had once been intimate. When the officers responded to her call, they found a black glove not far from

the station. DNA recovered from the glove matched a sample that was later obtained from Rusness.

After the robbery, Rusness called Hanson to pick him up, which Hanson did. Rusness had money bags with him. The two drove to Rusness's house, where they burned the money bags, the clothes Rusness wore during the robbery, and the checks. Afterwards, they went out to a casino. The next day, Rusness's aunt, who worked at the police station, told him an officer wanted to ask him some questions. The call worried Rusness, so he left the community to live in the Twin Cities for several months.

Eventually, Rusness was arrested and charged. At Rusness's trial, the station attendant and Hanson identified Rusness as the perpetrator of the robbery. A jury convicted Rusness of first-degree aggravated robbery. This appeal follows.

DECISION

The issue on appeal is whether there was sufficient evidence to support the jury's determination that appellant was guilty of two elements of first-degree aggravated robbery: (1) use or threat to use force and (2) use of a dangerous weapon. On a sufficiency-of-the-evidence claim, the reviewing court carefully examines the record to determine whether a fact-finder could reasonably conclude that the defendant was guilty of the offense charged. *State v. Bias*, 419 N.W.2d 480, 484 (Minn. 1988). The determination must be made under the assumption that the fact-finder believed the state's witnesses and disbelieved any contrary evidence, and must be made in the light most favorable to the conviction. *Id.* Credibility determinations are exclusively the responsibility of the jury. *Id.*; *State v. Tuvar*, 605 N.W.2d 717, 726 (Minn. 2000). “[A]ll

inconsistencies in the evidence are also resolved in favor of the state.” *State v. Bergeron*, 452 N.W.2d 918, 924 (Minn. 1990). Despite the foregoing, the fact-finder must have acted with due regard for the presumption of innocence and the necessity of overcoming that presumption by proof beyond a reasonable doubt. *State v. Combs*, 292 Minn. 317, 320, 195 N.W.2d 176, 178 (1972).

A person who, “while committing a robbery, is armed with a dangerous weapon . . . is guilty of aggravated robbery in the first degree.” Minn. Stat. § 609.245, subd. 1 (2004). A “dangerous weapon” is any instrumentality that “in the manner it is used . . . is . . . likely to produce death or great bodily harm.” Minn. Stat. § 609.02, subd. 6 (2004). A defendant is guilty of simple robbery if he knowingly takes the property of another and uses force to “overcome the person’s resistance . . . to compel acquiescence in, the taking or [the] carrying away of the property.” Minn. Stat. § 609.24 (2004).

A. Force

First, we consider the matter of force. Here, there is the following evidence of force: The attendant testified that Rusness announced that “This is a robbery,” displayed a knife, held the knife against her back, grabbed her arm, told her he did not want to hurt her, walked her to the safe, and instructed her to open it. There is no conflicting testimony. This language and these actions by a person holding a knife to another’s back constitute a sufficient basis for a jury to conclude that force was used or threatened.

B. Dangerous Weapon/Accomplice

Second, we consider whether there is adequate proof that a dangerous weapon was used. Rusness concedes that a knife is a dangerous weapon but argues that evidence of

its use is dependent on the testimony of Hanson and of the attendant, that both of them were accomplices, and that there is no corroborating evidence of a dangerous weapon.

There is no dispute that Hanson was an accomplice. Because accomplice testimony is not sufficient to convict, it must be corroborated. Minn. Stat. § 634.04 (2004); *State v. Henderson*, 620 N.W.2d 688, 700 (Minn. 2001). Thus, there is no question that, without corroboration, Hanson's testimony about the knife is not sufficient to convict. Rusness argues that the attendant was also an accomplice, pointing to the following: she knew Rusness several years earlier; she had obtained the combination for the safe from her employer earlier in the evening; opened the safe; and failed to properly close or lock the safe. Rusness had previously worked at the station and would have known that normally the safe would be locked and the cash inside inaccessible. The attendant opened the safe when he asked her to. Rusness argues that all this circumstantial evidence indicates the attendant cooperated in the crime, that she was an accomplice, and that her testimony regarding the knife requires corroboration from someone other than Hanson who is simply another accomplice.

The jury was given an instruction on accomplices and heard the accomplice argument by Rusness. There was significant evidence the attendant was not an accomplice: (1) she was distraught and immediately reported the crime; (2) she promptly identified Rusness as the robber to the law enforcement officers; (3) there is no evidence she had a relationship with Rusness in recent years; and (4) the safe was open because of a customer's request to purchase a gift card. Because gift cards were kept in the safe, the attendant had called the owner to obtain the combination, had then opened the safe, and

sold the gift card. There is no direct evidence that the attendant was an accomplice or was otherwise involved with the crime. Rusness's accomplice claim is, at best, circumstantial and attenuated. Based on this record, we conclude that the jury's verdict with proper instructions on the accomplice issue is supported by sufficient evidence, that in finding Rusness guilty the jury rejected the accomplice claim, and that the attendant's testimony regarding the knife does not require corroboration.

Having concluded that there is sufficient evidence to reject the claim that the attendant was an accomplice, we further conclude that her testimony established that the knife was used as a weapon in the commission of the robbery, and we affirm.¹

Affirmed.

Dated:

¹ In arguing the first part of the sufficiency-of-the-evidence issue (use of force), Rusness does not claim that the attendant was an accomplice or that her testimony about force requires corroboration. Given our conclusion about the jury rejection of the accomplice argument as it relates to a dangerous weapon, we observe the accomplice argument would not change our conclusion about the sufficiency of the evidence regarding use of force.